

# HOW TO PRESENT YOUR CASE IN SMALL CLAIMS COURT

## **STEP ONE:** How Legal Assistance can help you.

Small Claims Court is intended as a "People's Court," easily available to everyone. Disputes are resolved quickly and inexpensively. The person who sues is the plaintiff, and the person who is sued is the defendant. No attorneys are allowed, but you may consult one beforehand. A high percent of the cases can be handled without advice of an attorney. The Legal Assistance Office's attorney is available to advise service members and their families on almost any potential or pending small claims court suit. The Legal Assistance Office (LAO) cannot give advice for a client's business.

Although the LAO cannot represent you in civilian court, that office can help you prepare for your small claims court hearing. If you are uncertain about what evidence you need to present to the judge during your hearing, are having difficulties gathering your evidence, are uncertain about the legal issues involved in your case, or have any other questions, please make an appointment to visit the LAO. Call 242-5084. The LAO is located in building 275 on Plummer Street.

Other resources are: the Small Claims Court Advisor at 647-7773 or 755-5073; Everybody's Guide to Small Claims Court by Ralph Warner; A Handbook for Plaintiffs and Defendants, California Department of Consumer Affairs; the packet accompanying the small claims form you receive at the courthouse; and the California Small Claims Courts Information Center on the Web at <http://www.courtinfo.ca.gov/courts/trial/smallclaims/>

## **STEP TWO:** Gathering your evidence for trial.

The only way a plaintiff can win his or her case at trial is to present evidence to the judge which proves that the facts in the complaint are true and that the law is in their favor. Evidence includes testimony, written documents, material objects, and similar items. Examples of evidence include bills, receipts, photographs, contracts, deeds or titles, checks, eye witness testimony, sworn statements from witnesses, estimates from disinterested persons, etc. If you no longer have a receipt, you can call your bank to get a copy of the check you used to pay the bill. If you paid cash, you may be able to get a copy of the receipt from the business which billed you.

### **Examples:**

1. If you are suing someone for damaging your car, you can prove the extent of the damage to your car by (a) taking a picture of the damaged portion of the car, (b) getting your car repaired and showing the judge a copy of the receipt from the repair company showing how much you had to pay to get the car fixed, or (c) if the car has not been repaired, get an estimate from a repair company.
2. If you are suing your landlord for illegally withholding your security deposit, you would probably need to show the judge (a) a copy of your lease, (b) a copy of the letter you wrote to your landlord giving your landlord notice that you were moving, and (c) photographs of the house showing the condition you left it in when you moved.

3. If you are suing to recover money you already paid to someone, you must have a receipt or a canceled check showing that you paid the money.

**STEP THREE: Preparing for trial.**

- a. Be able to state the important facts of your case clearly and briefly. Stick to the facts, not your opinions.
- b. Type or write out a chronology of the important events of your case.
- c. Bring all your evidence to trial - have the original and copies of all documents.
- d. Appearance is important; dress well and look neat. It is not necessary to wear a suit, but look respectable.
- e. When speaking to the judge, call him or her "sir" or "ma'am," or "Your Honor."
- f. During the trial, never raise your voice to the judge and never interrupt the judge or the other party.
- g. If you do not understand a question that the judge has asked you, tell the judge you do not understand and ask him or her to explain it.
- h. The judge is there to decide your case. The judge cannot give you legal advice.

**STEP FOUR: Be on time.**

The clerk will tell you the time and date of your hearing. Arrive at the courthouse at least 15 minutes early. It is very important not to be late. If you are the plaintiff and not there when the judge calls your case, the judge can dismiss your case. If you are the defendant and not there when the judge calls your case, the plaintiff still has to prove his or her case, but this will be much easier since you are not there to tell your side of the story.

If you cannot make it to court on the day of your trial, call the judge's office ahead of time and ask for a later court date. The judge may or may not give you another court date, but if you are the plaintiff and do not call and do not appear for court, the judge will dismiss your case. If your case is dismissed and you still want a hearing, you will have to start again, filing new forms and paying the fees. If you are the defendant and do not call or appear, you are likely to lose your case and will probably have to pay the plaintiff's court costs.

**STEP FIVE: Events at trial.**

The judge will explain the procedures before hearings begin, then call each hearing to order. Both parties and their witnesses will take an oath to tell the truth. Each party will state their names for the record. The judge will ask the plaintiff to begin by stating the facts of his or her complaint. When the plaintiff is finished, the judge will ask the defendant to respond. The defendant will then present his or her own evidence to disprove what the plaintiff has stated.

When it is your turn to speak, tell your story simply and truthfully. Focus on the facts, not your opinion. Do not try to sound like a lawyer; just be yourself. Show the judge any evidence you have. After you have testified, your witnesses can testify, and you can ask them questions. The

judge or the other side is allowed to ask questions of you and of your witnesses.

**STEP SIX:** The judge's ruling.

The judge will make a decision after he or she has heard the testimony and seen the evidence presented by both the plaintiff and the defendant. The judge may rule immediately or "take the case under submission" which means you'll receive the judgment in the mail within two or three weeks. The judge can rule in any of the following ways:

1. Dismiss the case if the plaintiff fails to prove his or her case. This means that the court does not order the defendant to do anything that the plaintiff asked of the court;
2. Order the defendant to pay either the full amount claimed by the plaintiff or part of that amount, including the plaintiff's court costs;
3. Grant additional equitable remedies such as order the defendant to return property to the plaintiff; cancel the contract and try to return to the parties what they had before they made it; change an oral contract written down incorrectly to meet the original intent of the parties; require the contract be performed if it involves an unusual or "one-of-a kind" object. NOTE: You ask for equitable remedies in court not on the complaint. See California Code Of Civil Procedure 116.610.

**TERMS AND FREQUENTLY ASKED QUESTIONS**

1. IMPORTANT LEGAL TERMS:

**Plaintiff** - the party filing the lawsuit

**Defendant** - the party being sued by the plaintiff

**Complaint** - a document stating the legal dispute between the plaintiff and the defendant. This is also called a "claim" or a "cause of action"

**Summons** - a document given or "served" on the defendants to notify them that they are being sued

2. WHAT ARE THE REQUIREMENTS FOR FILING A COMPLAINT IN THE MONTEREY COUNTY SMALL CLAIMS COURT?

The filing fee is about \$20.

The amount of money or the value of the property over which the plaintiff is suing cannot be greater than \$5,000, and at least one of the defendants must be a resident of Monterey County.

Small Claims Court has a money limit of \$5,000. Any claim above \$5,000 must be handled in Municipal Court, and you would need to consult an attorney. Defendants generally must be sued in the county where they reside or are located, even if that county is different from the county where the plaintiff lives.

3. WHAT TYPES OF COMPLAINTS DOES SMALL CLAIMS COURT HANDLE?

Small claims Court can resolve money complaints:

- a. Money Owed - when you want to recover money you already paid someone or when you want to collect money someone owes you. For example, if you believe that your landlord has illegally withheld your security deposit, you can file a claim for money. If your mechanic does not properly repair your car, you can file a claim to recover the cost of your repairs.
- b. Money Owed plus other equitable relief. See Step Six paragraph 3 above. For example, if you lent your lawnmower to someone who not only damaged it but also refuses to return it, you can file a claim for damages to fix and recover your property.

#### 4. HOW DO I FILE A COMPLAINT IN THE MONTEREY AREA SMALL CLAIMS COURT?

Begin by going to the small claims court courthouse at 3180 Del Monte Blvd., Marina. The clerk will give you a complaint form described above, a summons, and an instruction sheet. In filling out your complaint, you must provide the defendant's full name and address. You can use the defendant's work address but not a P. O. Box. For each small claims action you file, you must complete both a complaint and a summons. Carefully read and follow the clerk's instruction sheet.

#### 5. HOW DO I SUE A BUSINESS?

If you are suing a business, you must find out if it is a corporation or not. If the business is a corporation, you should list the correct name of the corporation as the defendant (and the individual owners if you have a separate claim against them). Your complaint and summons must go to an officer of the corporation, or authorized agent. If the business is not a corporation, you should list the owners of the business as the defendants.

#### 6. HOW DO I FIND OUT IF MY DEFENDANT IS A CORPORATION AND TO WHOM TO SERVE?

Contact the California Secretary of State, Corporate Status Unit, 1230 J Street, Sacramento, CA 95814 (916) 445-2900. If the business is a corporation, that office will tell you the county, city, and street address of the corporation's registered agent and principal place of business, which may be in different counties. You may sue the corporation in either county. If there is no record of the corporation's registered agent or principal place of business, you may sue the corporation in any county where it does business.

If there is no record of that business as a corporation, then go to the county clerk where it does business and had to file a Fictitious Business Name statement. Another way to find out who owns a business is to check with Business Tax and License Office in the city or county where the business is located. You can sue all partners of a general partnership. Name them all in the complaint even if your dispute is with only one.

#### 7. HOW MUCH ARE THE COURT FEES, IF I SUE IN SMALL CLAIMS COURT?

The plaintiff must pay about a \$20.00 fee for each complaint filed. This fee is paid to the Clerk of Court. You must also pay about a \$30.00 fee for each defendant you sue to cover the cost of the sheriff getting the proper legal forms to the defendant. If you win your case, the judge will most likely order the losing party to pay your court costs. These are the initial costs of filing your claim.

If you have to issue any other paperwork pertaining to your case, (for example, a writ or subpoena), there will be additional court fees.

#### 8. IF I AM NOT SATISFIED WITH THE JUDGE'S RULING, HOW CAN I APPEAL?

After judgment is given in Small Claims Court, the defendant has the right to appeal an adverse decision and can get a whole new trial in Superior Court. This means both parties will have to present evidence and witnesses again. Superior Court is more formal and takes more time than Small Claims Court. Because the legal papers that you need to file in Superior Court are more complex, as are that court's procedures, you will probably need to hire an attorney. The appealing party has 30 days from the date of the Judge's decision in which to file the appeal. The fee to appeal is \$50.00.

#### 9. IF THE JUDGE RULES IN MY FAVOR, HOW CAN I COLLECT MY JUDGMENT?

If the judgment is in your favor and the defendant (judgment debtor) does not pay or appear within 35 days, you can enforce and collect the judgment.

You can obtain court orders requiring the judgment debtor to appear in court to give details about his or her finances and property, provide related documents or surrender cash or property. You can obtain other orders to garnish wages, invade bank accounts or cash registers, tie up or force the sale of real estate, or even suspend the judgment debtor's driver's license if your claim was based on a motor vehicle accident.

#### 10. ARE THERE ANY SPECIAL RULES THAT APPLY TO THE MILITARY?

Service members who are transferred out of California after their cases arise may be represented in small claims court by non-attorneys or may simply file a court declaration form in support of the claim. Enclose a copy of your orders. This option is a potent weapon in disputes over the return of rental property security deposits.

Service-member defendants who transfer out of California after their cases arise should send the court an explanation of their absence and a copy their orders. The court will likely dismiss the case.

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Useful resources: Small Claims Court Advisor 647-7751; Using the Small Claims Court, A Handbook for Plaintiffs and Defendants, California Department of Consumer Affairs; Everybody's Guide to Small Claims Court, Ralph Warner  
5/16/01